



Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

LUKP:108US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on April 3, 2006

Signature

Typed or printed name

C. Richard Lohrman

Application Number

10/791,123

Filed

03/02/2004

First Named Inventor

Berger et al.

Art Unit

3681

Examiner

Rodney H. Bonck

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

 attorney or agent of record.Registration number 46,878

Signature

C. Richard Lohrman, Esq.

Typed or printed name

716-626-1564

Telephone number

 attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 April 3, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Patent Application No.: 10/791,123

Confirmation No.: 2635

Applicant(s): Reinhard BERGER et al.

Customer No.: 24041

Filed: March 2, 2004

For: DRIVETRAIN

TC/Art Unit: 3681

Examiner: Rodney H. BONCK

Docket No.: LUKP:108US

Certificate of Mailing by First Class Mail

I certify that this Pre-Appeal Brief Request for Review is being deposited on April 3, 2006 with the U.S. Postal Service as first class mail under 37 C.F.R. §1.8 and is addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

C. Richard Lohman
Regis. No. 46,878

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Honorable Sir:

This Pre-Appeal Brief Request for Review is filed in response to the Final Office Action dated December 2, 2005, and the Advisory Action dated March 14, 2006, regarding the above identified patent application. Applicants hereby request review of the final rejection in the above-identified matter. A Notice of Appeal is concurrently filed this day for the above case.

A petition for a one month extension of time and a check in the amount of \$620.00 for the Notice of Appeal and extension of time fees, are enclosed.

Support for this Pre-Appeal Brief Request for Review is as follows:

Remarks begin on page 2 of this paper.

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U.S. Patent Application No. 10/791,123
Reply to Office Action of December 2, 2005
Date: April 3, 2006

Remarks

The Rejection of Claims 1-3, 5 and 6 Under 35 USC §103(a)

Claims 1-3, 5 and 6 were rejected under 35 USC §103(a) as unpatentable over the device described in paragraph [0002] of the instant application, in view of U.S. Patent No. 6,234,290 (“Drexl”).

Applicants courteously submit that Primary Examiner Bonck has stated errors in fact by asserting that the devices disclosed by Drexl and paragraph [0002], in combination, render obvious a friction clutch having a pressure relief device that is operated by an outside actuator, as claimed in the instant application.

Claim 1 of the instant application recites a drivetrain comprising a friction clutch for decoupling a transmission from an internal combustion engine where a hydraulic line between the master cylinder and the slave cylinder is a pressure relief device that sets back a pressure applied between the master cylinder and the slave cylinder when actuated, wherein the pressure relief device is operable by the driver via an actuating device. On page 6, third paragraph, through page 7, first paragraph, of the Request for Reconsideration of March 2, 2006 (the Reply), Applicants show that Drexl does not disclose a pressure relief device that is operable by a driver via an actuating device as recited in Applicants’ Claim 1. However, in the Advisory Action, page 2, item #11, Examiner Bonck asserts that in Drexl, a driver operating actuator 62 can apply sufficient pressure to cause operation of the pressure relief device. Applicants acknowledge that according to Drexl, when a sufficient pressure exists within the pneumatic system, the pressure relief valve is operated, *i.e.*, the overload protection circuit relieves excess pressure. However, clutch pedal 62 may be actuated without activating the overload protection circuit, *e.g.*, insufficient pressure within the pneumatic system to operate the pressure relief valve.

Assuming *arguendo* that Drexl teaches an actuator as asserted by Examiner Bonck’s, which it does not, Drexl still fails to identify a structure controlled by the driver that actuates a pressure relief device from outside of the hydraulic circuit. Moreover, on page 6 and 7 of the Reply, Applicants show that Drexl only discloses an overload protection circuit that is affected

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by pressure changes in the system. The overload protection circuit in Drexel cannot be directly operated by a driver via an actuating device. Additionally, the overload protection circuit disclosed by Drexel is inside the hydraulic circuit and comes into operation due to pressure changes in the hydraulic circuit. Furthermore, the structure disclosed by Drexel is not equivalent to the pressure relief device recited in Claim 1 of the instant application, which is directly operated by a driver via an actuating device. Specifically, the pressure relief device recited in Claim 1 is actuated by the driver, regardless of the pressure within the hydraulic circuit. Applicants also show on page 7 of the Reply that Drexel teaches a pressure relief valve that is inside the hydraulic circuit to limit the force at the end of activation travel, which is merely an approach for limiting excess pressure. However, the claimed pressure relief device is designed to avoid emergency states if an actuator should fail. It is argued on page 7 of the Reply that excess pressure is not limited by the pressure relief device recited in Claim 1, but the claimed pressure relief device has the capability of setting the pressure to zero in an emergency. This is not capable with the pressure relief device taught in Drexel.

In the Final Action, Examiner Bonck asserts that paragraph [0002] describes a clutch that is disengaged in the force-free state of the clutch and that Drexel describes a pressure relief device. Thus, Examiner Bonck asserts, it would have been obvious to combine the references, since there is a motivation to protect against excess pressure in this type of system. However, the pressure relief device recited in Claim 1 of the instant application is activated by the driver not by excess pressure.

Furthermore, on page 6 of the Reply Applicants show that Drexel does not disclose a clutch that is disengaged in a force-free state of the clutch. Applicants courteously assert this is because it is impossible to actuate a clutch which is disengaged in a force-free state with a clutch pedal. Moreover, the overload-protection circuit of Drexel works only in conjunction with a manually operated clutch that is activated by pressure changes caused by the pushing of the clutch pedal. The pressure relief device of Drexel would not operate with the clutches described in paragraph [0002] because such clutches can disengage in a force-free state. Therefore, even if the pressure relief device recited in Claim 1 was equivalent to the overload-protection circuit of

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Drexel, the combination of a pressure relief device with a clutch that is disengaged in a force-free state would not have been obvious to one of ordinary skill in the art.

In order to establish a *prima facie* case of obviousness, the references, alone or in combination, must teach all the elements of the rejected independent Claim 1, which they do not. Neither Drexel nor paragraph [0002] teach a clutch with a pressure relief device that sets back a pressure applied between the master cylinder and the slave cylinder when actuated, and that is operable by a driver via an actuating device. Additionally, since Claim 1 is non-obvious in view of the cited references, due to missing elements, it necessarily follows that Claims 2, 3, 5 and 6 are also non-obvious in view of Drexel and paragraph [0002], due to their dependency from Claim 1. Accordingly, withdrawal of the rejection of Claim 1-3, 5 and 6 under 35 USC §103(a) is appropriate and respectfully requested.

The Rejection of Claims 8-11 and 13 under 35 USC §103(a)

Additionally in the Final Action, Claims 8-11 and 13 were rejected under 35 USC §103(a) as being unpatentable over the device described in paragraph [0002] in view of U.S. Patent No. 6,234,290 (“Drexel”) as applied to Claims 1-6 above, and in further view of U.S. Patent No. 3,352,392 (“Black”).

Applicant’s arguments regarding Claims 8-11 and 13 are presented on page 8 of the Reply. As stated *supra*, paragraph [0002] and Drexel fail to teach all of the elements of Applicants’ Claim 1. Nor do paragraph [0002] and Drexel suggest all of the limitations of Claim 1. Hence, Claim 1 and all claims dependent therefrom, *i.e.*, Claims 8-11 and 13, are patentable over paragraph [0002] and Drexel. Since Black fails to cure the defects of paragraph [0002] and Drexel, specifically, the teaching of a pressure relief valve that is directly operable by a driver via an actuator, Claims 8-11 and 13 are patentable over paragraph [0002] and Drexel, in further view of Black. Accordingly, withdrawal of the rejection of Claim 8-11 and 13 under 35 USC §103(a) is appropriate and respectfully requested.

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The Rejection of Claims 8, 14 and 16-18

Claims 8, 14 and 16-18 were rejected under 35 USC §103(a) as being unpatentable over the device described in paragraph [0002] in view of U.S. Patent No. 6,234,290 ("Drexel") as applied to Claims 1-6, and in further view of U.S. Patent No. 4,632,234 ("Bardoll").

Applicant's arguments regarding Claims 8, 14 and 16-18 are presented on page 9 of the Reply. As stated *supra*, paragraph [0002] and Drexel fail to teach all of the elements of Applicants' Claim 1. Nor do paragraph [0002] and Drexel suggest all of the limitations of Claim 1. Hence, Claim 1 and all claims dependent therefrom, *i.e.*, Claims 8-11 and 13, are patentable over paragraph [0002] and Drexel. Since Bardoll fails to cure the defects of paragraph [0002] and Drexel, specifically, the teaching of a pressure relief valve that is directly operable by a driver via an actuator, Claims 8, 14 and 16-18 are patentable over paragraph [0002] and Drexel, in further view of Bardoll. Accordingly, withdrawal of the rejection of Claim 8, 14 and 16-18 under 35 USC §103(a) is appropriate and respectfully requested.

Conclusion

For all the above reasons outlined above, Applicant respectfully submits that the claims are patentable over the cited references and in condition for allowance, which action courteously requested.

Respectfully submitted,



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Dated: April 3, 2006